

**REMARKS**

Claims 1, 2, 5, 6, 10, 20-23, 30 and 36-39 are pending in this application, claims 21-23, 30, and 36 having been withdrawn from consideration. By this Amendment, claim 10 is amended, claims 8-9 and 13-17 are cancelled, and claim 39 is added. Support for new claim 39 can be found, for example, in original claim 11. No new matter is added. In view of the foregoing amendments and following remarks, reconsideration and allowance are respectfully requested.

I. Restriction

As indicated above, claims 21-23, 30, and 36 have been withdrawn from consideration. Each of claims 21-23, 30, and 36 depends from and includes all of the limitations of elected claim 1. Accordingly, upon allowance of claim 1, claims 21-23, 30, and 36 should be rejoined, considered in this application, and allowed.

II. Rejection Under 35 U.S.C. §112, Second Paragraph

The Office Action rejects claims 1-2, 5-6, 8-10, 13-17, 20, and 37-28 as indefinite under 35 U.S.C. §112, second paragraph. By this Amendment, claim 10 is amended and claims 8-9 and 13-17 are cancelled, rendering the rejection moot as to those claims. As to the remaining claims, Applicants respectfully traverse the rejection.

A. Claims 8-10 - "highly stringent" conditions

Claims 8-10 are alleged to be indefinite for reciting the phrase "highly stringent conditions." The Office Action argues that the term is vague and indefinite, because the term "high" is a subjective term with subjective scope. Applicants disagree.

Because "highly stringent" conditions are well known and recognized in the art, the term would not be considered by one of ordinary skill in the art to be a subjective term, and thus would not be deemed indefinite. For example, the attached excerpt from George H. Keller et al., DNA Probes, 2d Ed., pp. 5-10 (1993), demonstrates that "highly stringent"

conditions are well known and recognized in the art. This reference demonstrates that one of ordinary skill in the art could readily determine highly stringent conditions based on the knowledge he possesses. Furthermore, the reference at page 9, last paragraph, describes that the optimum hybridization temperature can be readily determined by a convenient method, if necessary.

For at least these reasons, the term "highly stringent" conditions is not indefinite, and its scope would be readily apparent to and recognized by one of ordinary skill in the art.

B. Claims 1-2 - "retroviral RNA molecule"

Claims 1-2 are alleged to be indefinite for reciting the phrase "retroviral RNA molecule." The Office Action argues that the term is vague and indefinite, because it is not clear what characteristics the RNA must possess in order to be considered retroviral.

Applicants disagree.

Initially, Applicants submit that the basis for the rejection is unclear. In particular, the terms "retroviral," "RNA," and "molecule" are all clear and well understood by one of ordinary skill in the art. Thus, if the terms are clear and not indefinite, it is not understood how the Office Action can argue that the combined term can be considered to be indefinite.

Furthermore, the term "of retroviral type" is clearly and unambiguously defined in the specification as:

The expression "of retroviral type" is understood to mean the characteristic according to which the nucleic material considered comprises one or more nucleotide sequences related to the organization of a retrovirus, and/or to its functional or coding sequences.

See specification at page 4, lines 8-13. As such, the term "retroviral RNA molecule" would refer to an RNA molecule, where RNA molecules are well known in the art, wherein the RNA molecule comprises one or more nucleotide sequences related to the organization of a retrovirus, and/or to its functional or coding sequences. In addition, throughout the

specification, including in the abstract, Applicants describe the nucleic acid material set forth in claims 1 and 2 as retroviral RNA. See, for example, specification at Example 1.

As further support that "retroviral RNA molecule" is not indefinite, Applicants provide the attached copy of Roswitha Lower et al., "The Viruses in all of us: Characteristics and biological significance of human endogenous retrovirus sequences," Proc Natl Acad Sci USA, Vol. 93, pp. 5177-5184 (May 1996). This reference clearly shows, as of at least May 1996, that one of ordinary skill in the art would have understood what is and what is not encompassed by the term "retroviral RNA molecule."

For at least these reasons, the term "retroviral RNA molecule" is not indefinite, and its scope would be readily apparent to and recognized by one of ordinary skill in the art.

C. Claims 8-10 - "derived specific amplification product thereof"

Claims 8-10 are alleged to be indefinite for reciting the phrase "derived specific amplification product thereof." Although Applicants do not necessarily agree with the rejection, claims 8-9 are canceled and claim 10 is amended to delete the word "derived." Accordingly, it is believed that claim 10 is not indefinite, and its scope would be readily apparent to and recognized by one of ordinary skill in the art.

D. Conclusion

For at least these reasons, the claims are not indefinite. Accordingly, claims 1-2, 5-6, 8-10, 13-17, 20, and 37-28 are definite. Reconsideration and withdrawal of the rejection are respectfully requested.

III. Rejections Under 35 U.S.C. §102

Claims 8, 13, and 15-17 are rejected under 35 U.S.C. §102(a) as being anticipated by an NCBI report. Claims 8-10, 13, and 15-17 are rejected under 35 U.S.C. §102(e) as being anticipated by Jacobs. Claims 8, 13, and 15-17 are rejected under 35 U.S.C. §102(b) as being anticipated by Jurka. Applicants respectfully traverse the rejections.

With respect to each of the rejections, although Applicants do not necessarily agree with the rejections, claims 8-9 and 13-17 are canceled herein, rendering the rejections moot. Accordingly, the rejections are overcome, and must be withdrawn.

With respect to the rejection over the NCBI report, Applicants also respectfully point out that the Office Action has not established that the NCBI report in fact qualifies as prior art to the present claims. Although the reference indicates that it was "submitted" November 13, 1996, the Office Action has not indicated when the reference was actually published, and thus available as prior art.

With respect to the rejection over Jacobs, the rejection includes claim 10. However, because claim 10 depends from claim 1, which has not been rejected, the rejection of claim 10 over Jacobs is improper.

#### IV. New Claim

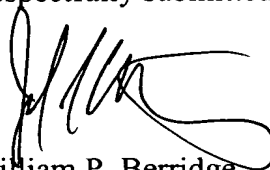
By this Amendment, new claim 39 is presented. Claim 39 depends from claim 1 and, thus, is allowable at least for the reasons discussed above with respect to claim 1.

#### V. Conclusion

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of the application are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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WPB:JSA

Attachments:

George H. Keller et al. reference  
Roswitha Lower et al. reference

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